

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

**COMMENTS OF THE NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, submits the following comments in response to the Commission’s Third Notice of Proposed Rulemaking (FCC 02-303, rel. Nov. 20, 2002) in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

The Commission’s recently issued Equal Employment Opportunity (“EEO”) rules applicable to multichannel video programming distributors (“MVPDs”) and broadcasters define a full-time employee as one whose regular work schedule is 30 hours or more a week. In the Third Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on whether, and if so how, the EEO rules should apply to part-time positions; i.e., positions held by permanent employees whose regular work schedules are less than 30 hours per week.

Previously, the FCC “... applied a ‘substantial compliance’ policy to positions involving less than 30 hours a week, although ... [the Commission] did not require reporting of this effort and did not focus on part-time hires.”¹ The agency undertakes this separate proceeding because

¹ *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, Third Notice of Proposed Rulemaking*, FCC 02-303, rel. Nov. 20, 2002, at ¶ 182.

it does not have sufficient evidence in the record in the just completed Second Report and Order “to make an informed decision about whether and how to apply the new EEO rules and policies to part-time positions.”²

The cable industry is fully committed to upholding the letter and the spirit of the statutory requirement that “... no person shall be discriminated against in employment by ... [a cable system] ... because of race, color, religion, national origin, age or sex.”³ This commitment applies to all employment positions, including part-time positions.

The issue in the instant proceeding is how the Commission should apply the EEO rules to part-time positions. NCTA recommends that:

- The Commission define “part-time position” for purposes of MVPD EEO recruitment, reporting and recordkeeping as a position held by a permanent employee whose regular work schedule is at least 25 hours per week, but no more than the 30 hours per week.
- The Commission apply the same recruitment, reporting and recordkeeping procedures to part-time employees as are applied to full-time employees.
- The Commission not apply the EEO recruitment, reporting and recordkeeping procedures to “permanent” employees who work less than 25 hours per week.
- The Commission not apply the EEO recruitment, reporting and recordkeeping procedures to “temporary” employees or employees of companies that contract with a cable system for the provision of services.

Adoption of this approach will effectively balance the objective of effective EEO recruitment against the risks associated with imposing burdensome recruitment, reporting and recordkeeping that will not further the goals and purposes of Section 634 of the Cable Act and of the Commission’s rules.

² *Id.*

I. THE EEO RULES FOR CABLE OPERATORS AND OTHER MVPDS SHOULD APPLY TO “PERMANENT PART-TIME POSITIONS” WHOSE REGULAR WORK SCHEDULE IS AT LEAST 25 HOURS, BUT LESS THAN 30 HOURS, PER WEEK

The Third Notice of Proposed Rulemaking (“Third Notice”) seeks comment on whether the EEO rules that apply to full-time positions in the MVPD and broadcast industries should apply also to part-time positions, which are defined as permanent positions of less than thirty hours per week on a regular basis. The Third Notice further inquires about the number and types of positions to which the part-time classification currently applies, the significance of these positions to entry into the affected industries, the extent to which recruitment, reporting and recordkeeping procedures applicable to full-time positions should also apply to part-time positions, and whether the Commission should establish a minimum hours threshold for a part-time position to be subject to the recruitment and related procedures.

The cable industry fully recognizes its obligations to hire all employees without discriminating on the basis of race, color, religion, national origin or gender. The Commission’s cable EEO rules implement the statutory scheme that Congress adopted in 1984, and modified in 1992, to achieve its goal of nondiscrimination in hiring by cable operators. The recruitment, reporting and recordkeeping procedures are designed to further the goal of nondiscriminatory hiring. In the following comments, NCTA presents proposals for the application of recruitment, reporting and recordkeeping requirements to part-time positions in the cable industry.

³ 47 U.S.C. § 554(b).

A. The EEO Recruitment, Reporting and Recordkeeping Requirements Should Apply to Permanent Part-Time Positions in Which Employees Work a Minimum of 25 Hours Per Week

The Commission's EEO rules define a full-time employee as an employee "... whose regular work schedule is 30 hours or more a week."⁴ While the general practice in the cable industry is to classify employees as "full-time" if they work a minimum of 35 hours per week for all purposes except the EEO rules, for EEO purposes cable employment units with six or more full-time employees have complied with the 30-hour minimum, and have undertaken recruitment for all positions that satisfy this threshold. The cable industry intends to continue these practices pursuant to the procedures adopted in the Second Report and Order.

The cable industry supports the extension of the recruitment, reporting and recordkeeping requirements to permanent employees who regularly work a minimum of 25 hours per week. Expansion of these requirements to permanent part-time positions for this minimum period each week is consistent with the pursuit of the statutory goal of a diverse work force.

Extension of the recruitment, reporting and recordkeeping procedures to these permanent part-time positions will not impose an excessive burden on cable operators. Cable operators already comply with nondiscriminatory hiring practices for all positions. Several MSOs have voluntarily applied the recruitment procedures to permanent part-time hires satisfying the 25 hour per week minimum. The formal extension of these procedures to permanent employees who work 25 hours per week would be a reasonable extension of the EEO procedures to additional components of the cable system work force.

⁴ *Supra* n. 2.

B. The EEO Recruitment, Reporting and Recordkeeping Procedures Should Not Apply to Employees Who Work Less Than 25 Hours Per Week

While the cable industry supports the expansion of the recruitment and related requirements to permanent MVPD employees who regularly work at least 25 hours per week, we oppose the extension of these procedures to employees who are on a shorter regular schedule. We believe that drawing the line for coverage of this procedure at 25 hours per week strikes the proper balance between the implementation of effective EEO recruitment procedures and the avoidance of excessively burdensome processes that are unlikely to promote equal opportunity in cable system employment.

The Third Notice implicitly acknowledges the need to balance the potential benefits of expanding coverage of the EEO recruitment regulations to additional employees against the regulatory burdens that may result from extending coverage of the requirements. The Third Notice inquires, for example, into the potential magnitude of the burden of imposing the recruitment and related procedures to part-time positions. The Third Notice also asks about the numbers and types of positions that would fall outside of the recruitment and associated processes and relates this inquiry to “the significance of these positions in terms of entry into [the covered industries].”⁵ The Commission further asks whether different requirements should be applied to part-time positions, thereby suggesting it might be inappropriate to apply the recruitment and related obligations to positions that are not significant to entry into these industries.

The cable industry does not advocate variable recruitment and related procedures for permanent part-time positions involving at least 25 hours of work per week. NCTA does not

⁵ *Id.*

have data on the actual number of permanent part-time employees in the cable industry. The Commission has not required companies to maintain separate data on part-time employees, including part-time employee data on the basis of the number of hours actually worked on a regular basis. Nor have cable companies generally collected and maintained this data in a form that is readily aggregated and therefore easily compiled to demonstrate hiring patterns.

NCTA's response to the Third Notice is based instead on conversations with four of its largest members. We are advised that the vast majority of part-time positions are held by telemarketers and customer service representatives (CSRs). Telemarketers place calls to potential customers to inquire of their interest in video, broadband Internet access and other services. They also call current customers to advise them of services offered by the cable operator to which they do not subscribe. CSRs determine the details of the services customers wish to purchase, schedule service appointments, and respond to customer inquiries and complaints. There may be sporadic instances of other functions performed by part-time personnel working less than 25 hours per week, but we are not aware of any specific evidence that these positions exist in significant numbers.

Consultation with our members reveals also that persons holding part-time positions of less than 25 hours per week are not generally viewed as likely candidates for long-term full-time positions. These employees are, instead, generally evaluated based upon their performance of their existing functions.

Imposition of the recruitment and related procedures on part-time employees working less than 25 hours per week would be burdensome to cable operators. While cable operators will not discriminate in hiring for these positions, the imposition of recruitment and related obligations with respect to these positions could be counterproductive. If, for example, a cable

operator sponsors a job fair with the goal of providing career opportunities for minorities and women, the operator should not be required to devote limited recruitment resources to promote these positions which offer little or no prospect for career advancement. On the same grounds, MVPDs should not be permitted to satisfy the recruitment requirement by conducting a training program for positions that provide little or no opportunity for the development of skills that can be used in other aspects of the cable business. Industry resources should be focused instead on positions that offer genuine opportunities for career advancement.

II. THE EEO RECRUITMENT, REPORTING AND RECORDKEEPING PROCEDURES SHOULD NOT BE APPLIED TO TEMPORARY EMPLOYEES OR CONTRACT EMPLOYEES

The Commission should make clear that the EEO recruitment and related procedures will apply only to permanent part-time employees working at least 25 hours per week on a regular basis. These procedures should not apply to “temporary” employees or employees of companies that contract with cable operators to provide services.

NCTA is not in possession of data on the numbers of temporary or contract employees in the cable industry. Our understanding is, again, that they represent a relatively small percentage of total industry employment. We further believe that most temporary employees are telemarketers and CSRs who are hired in special circumstances – such as when new advanced services become available to a community – in order to make subscribers aware of the new services and to meet unusual levels of demand.

The EEO rules should not be applied also to contractors of cable operators. It has been the practice of some cable operators to employ contractors to perform certain functions. Contractors, for example, are sometimes used by cable companies to supplement telemarketing operations regularly undertaken by cable system employees. Since cable operators do not hire

the employees of the providers of these and other contracted services and these contractors are not subject to Section 634 of the Communications Act or the Commission's jurisdiction, the Commission should make clear that employees of contractors of MVPDs are not subject to the recruitment and related procedures.

CONCLUSION

The cable industry is fully committed to non-discriminatory hiring practices. We have supported the implementation of the recruitment and related procedures intended to further the goals of Section 634. We support the expansion of the recruitment and related procedures to permanent part-time employees who regularly work a minimum of 25 hours per week. But we oppose extending the recruitment and related procedures to part-time employees who regularly work less than 25 hours per week, temporary employees and contract employees.

Respectfully submitted,

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